

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:13-cv-142**

|  |   |              |
|--|---|--------------|
| <b>U.S. XPRESS, INC.,</b>              | ) |              |
|  | ) |              |
| <b>Plaintiff,</b>                      | ) |              |
|  | ) |              |
| <b>vs.</b>                             | ) | <b>ORDER</b> |
|  | ) |              |
| <b>TA OPERATING LLC,</b>               | ) |              |
|  | ) |              |
| <b>Defendant.</b>                      | ) |              |
| <hr style="width:40%; margin-left:0"/> | ) |              |

**THIS MATTER** is before the Court *sua sponte* to ascertain subject matter jurisdiction. The Plaintiff filed its Amended Complaint (#7) in this matter alleging jurisdiction in this Court based upon diversity jurisdiction. In the Complaint, Plaintiff alleges that Defendant TA Operating LLC is a limited liability corporation organized and existing under the laws of the state of Delaware.

Courts have an affirmative duty to question subject matter jurisdiction even when the parties have not done so. Interstate Petroleum Corp. v. Morgan, 249 F.3d 215 (4<sup>th</sup> Cir. 2001); Plyer v. Moore, 129 F.3d 728, 732 n.6 (4th Cir. 1997), *certiorari denied* 524 U.S. 945, 118 S.Ct. 2359, 141 L.Ed.2d 727 (1998); 28 U.S.C. §1447(c)(“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”). A limited

liability company is a citizen of all states in which its constituent members are citizens. Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990). Defendant has not, in its Answer, stated whether it has constituent members or partners that are citizens and residents of the state of North Carolina, that being the jurisdiction where the Plaintiff corporation was organized and existing.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that on or before **August 30, 2013**, the Defendant shall file a response disclosing the names and citizenships, if any, of all the constituent members or partners of TA Operating LLC, and for any such constituent members or partner that is a limited liability company or partnerships shall identify the citizenships of the respective constituent members or partners until all such constituents are fully identified.

Signed: August 7, 2013

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Dennis L. Howell  
United States Magistrate Judge

